

SUPREME COURT OF ARKANSAS

No. CR06-1188

LARRY PETERS

APPELLANT,

VS.

STATE OF ARKANSAS

APPELLEE,

Opinion Delivered April 12, 2007

MOTION TO FILE A BELATED
RETURN OF A WRIT OF
CERTIORARI; MOTION FOR
BELATED APPEAL.

MOTION TO FILE A BELATED
RETURN OF A WRIT OF
CERTIORARI GRANTED.

MOTION FOR BELATED APPEAL
DENIED.

PER CURIAM

A judgment and commitment order entered on July 22, 2005, indicates that Larry Peters was found guilty by a jury of possession of a controlled substance (cocaine) with intent to deliver, delivery of a controlled substance (cocaine), possession of drug paraphernalia, and theft by receiving, and that he received an aggregate sentence of twenty years' or 240 months' imprisonment in the Arkansas Department of Correction. On December 14, 2006, we remanded this case and issued a writ of certiorari, directing the circuit court to enter findings with this court within sixty days regarding whether Mr. Peters advised his trial counsel, Mr. Billy Moritz, that he wished to appeal within thirty days from the date the judgment was entered. *See Ark. R. App. P. – Crim. 2(e) (2006).*

The circuit court was untimely in tendering the findings due to the Nevada County

Sheriff's Office's failure to transport Mr. Peters on the date of the scheduled hearing, February 6, 2007. The circuit court rescheduled the hearing and conducted it on March 14, 2007. The circuit court, thereafter, entered its findings on March 16, 2007. The State now asks that we grant a belated return of a writ of certiorari in order to take notice of the circuit court's findings. We grant the State's motion to file the belated writ and deny Mr. Peter's request for a belated appeal.

While it is well settled that a defendant has the right to appeal the judgment, a belated appeal is not proper when a defendant waives his or her right to appeal by failing to inform trial counsel of their intent to appeal within thirty days of the entry of the judgment. *See Strom v. State*, 348 Ark. 610, 74 S.W.3d 233 (2002). At the hearing, the circuit court concluded: "I am finding that Mr. Moritz did advise [Mr. Peters] of the right to appeal, and [Mr. Peters], at that time, did not want to appeal." Based on these findings, we must conclude that Mr. Peters waived his right to appeal when he failed to timely inform his counsel of his intent to appeal. *See id.* Consequently, Peters's motion to file a belated appeal is denied.